

PROB 12B  
(7/93)

FEB 24 2006

*United States District Court*For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

for

*the Northern Mariana Islands***Report for Modifying the Conditions or Term of Supervision  
with Consent of the Offender***(Probation Form 49, Waiver of Hearings is Attached)*Name of Offender: **Joey Junior Mendiola** Case Number: **CR 02-00006-001**

Name of Sentencing Judicial Officer: Honorable Alex R. Munson

Date of Original Sentence: April 8, 2003

Original Offense: Possession of Stolen Firearms, in violation of 18 U.S.C. §§922(j) and 924(a)(2)

Original Sentence: Three years probation with the following conditions: serve six months of home detention under home confinement; not commit another federal, state, or local crime; not possess a firearm or other dangerous weapon; comply with the standard conditions of probation; refrain from any unlawful use of a controlled substance; submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter; refrain from the use of any and all alcoholic beverages; participate in a program approved by the U.S. Probation Office for the assessment and treatment of narcotic addiction or drug or alcohol dependency which will include testing for the detection of substance use or abuse; submit to a mental health intake assessment and any recommended treatment; obtain and maintain gainful employment; pay jointly and severally, with his co-defendants, the amount of \$16,908.83 in restitution to the victim; perform 300 hours of community service; and continue to cooperate and give assistance to the United States Government. **Modified on October 8, 2003** to reduce the amount of restitution to \$9,289.52.

Type of Supervision: Probation

Date Probation Commenced: April 8, 2003

**PETITIONING THE COURT**

- ☐ To extend the term of supervision \_\_\_\_\_ years, for a total term \_\_\_\_\_ years.
- ☒ To modify the conditions of supervision as follows:

1. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight drug tests per month, as directed by the probation officer.

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CAUSE

On September 2, 2005, the Ninth Circuit, in *United States v. Stephens*, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power. To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated the Mr. Mendiola's history of drug use, as well as the drug detection period for his drug of choice. Due to Mr. Mendiola's history of drug and alcohol abuse, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of any use of drugs or alcohol. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender. To address the implications of *United States v. Stephens*, Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Mr. Mendiola's mandatory condition to set the maximum number of tests he must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

Mr. Mendiola has tested consistently negative for drugs and alcohol use since the commencement of probation. He successfully completed the drug treatment and mental health programs on April 29, 2004. He was gainfully employed and making monthly restitution payments until his employer, STS Enterprises, closed business on December 31, 2005. Mr. Mendiola is currently seeking employment while completing his remaining community service hours. He paid his \$100 special assessment fee on April 8, 2003, and complied with DNA collection requirements on January 20, 2005.

Based on the information above, the probation officer respectfully requests that the Court modify the conditions of probation, pursuant to 18 U.S.C. § 3563(c) as outlined above. Attached is Probation Form 49, Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision, with Mr. Mendiola's consent to the modification.

Reviewed by:

  
ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer  
Supervision Unit Leader

Date: 2/24/06

Respectfully submitted,

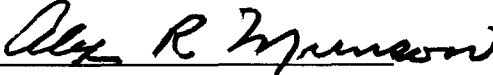
by:   
MELINDA N. BRUNSON

U.S. Probation Officer

Date:

**THE COURT ORDERS**

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other

  
Signature of Judicial Officer

2-24-06

Date

PROB 49  
(3/89)

*United States District Court*

for

*District of Northern Mariana Islands*

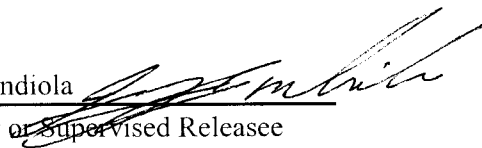
**Waiver of Hearing to Modify Conditions  
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

That the defendant shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of ~~release from imprisonment~~ <sup>Commencement of PROBATION</sup> and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer;

Witness: Melinda N. Brunson   
U.S. Probation Officer

Signed: Joey Junior Mendiola   
Probationer or Supervised Releasee

2/13/06  
Date